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Clerk of the Court  
Michigan Supreme Court  
msc\_clerk@jud.state.mi.us

**RE: Proposed Amendment to MCR 2.401 and 2.410**

Dear Sir or Madam::

I am a member of the Michigan Bar. My practice is primarily concentrated in the area of business litigation. I have recently been elected to the council of the Alternative Dispute Resolution Section of the Michigan State Bar.

I am writing to recommend that the Michigan State Bar oppose the amendment to MCR 2.401 that would require parties to "participate in good faith" in the mediation process. I have found a facilitated mediation to be an extraordinary helpful means of resolving cases pre-litigation and pre-trial. Certainly the principal decision makers of the parties to a dispute need to be directly involved in the mediation process, and all parties need to participate in good faith. The primary problem with the "good faith" requirement in the proposed court rule is that it will establish an additional locus of litigation for the parties engaged in the dispute. It will undoubtedly lead to the accusations that opposing parties have not participated in good faith in the mediation process. Demands for sanctions will follow. Facilitated mediation works best when the process is voluntary. I urge the State Bar to oppose the Michigan Supreme Court's proposed rules for 2.401 and 2.410 to the extent that they mandate the parties to mediation "participate in good faith" in the process.

Thank you for your consideration.

Sincerely yours,

SOMMERS, SCHWARTZ, SILVER  
& SCHWARTZ, P.C.



James J. Vlasic

JJV/kak